

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,
Plaintiff;

CIVIL NO.

v.

MISSISSIPPI BAKERY,
a division of ALDI, INC.

Defendant.

COMPLAINT

3 04 CV 80102

The United States of America, at the request of the Administrator of the United States Environmental Protection Agency (EPA) files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Clean Air Act, 42 U.S.C. §7401, *et seq.*, against Defendant, Mississippi Bakery, a division of Aldi, Inc., for civil penalties for violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations found at 40 C.F.R. Part 82, Subpart F, §§82.152 - 82.166.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §7413(b) and 28 U.S.C. §§1331, 1345, and 1355.

3. Venue is proper in the Southern District of Iowa pursuant to 42 U.S.C. §7413(b) and 28 U.S.C. §§1391(b) and 1395(a), because it is the judicial district in which: (1) Mississippi Bakery is located and does business; (2) the events giving rise to the claims occurred; and (3) the violations of the Clean Air Act occurred.

NOTICE AND AUTHORITY

4. The United States Department of Justice has authority to bring this action on behalf of the EPA pursuant to 28 U.S.C. §§516 and 519 and 42 U.S.C. §7605(a).

5. Notice of intention to commence an action for violations of the Clean Air Act has been given to the State of Iowa pursuant to 42 U.S.C. §7413(b). A file-stamped copy of the Complaint will be provided to the State of Iowa.

DEFENDANT

6. Mississippi Bakery, located at 834 Jefferson Street, Burlington, Iowa, is a division of Aldi, Inc. Aldi, Inc's parent company is located in Germany and its American corporate headquarters are located in Batavia, IL. Mississippi Bakery bakes bread and doughnuts for Aldi Foods grocery stores.

STATUTORY AND REGULATORY PROVISIONS

7. Emissions of certain substances that destroy the stratospheric ozone layer, known as Class I and Class II ozone-depleting substances, are regulated and controlled under 42 U.S.C. §§7671-7671q.

8. The EPA is required to promulgate regulations establishing standards and requirements for the use and disposal of Class I and Class II ozone-depleting substances during the service, repair or disposal of appliances and industrial process refrigeration. 42 U.S.C. §7671g. These regulations are found at 40 C.F.R. §§82.150 - 82.166.

9. It is unlawful to vent or otherwise release any Class I or Class II substance in a manner which permits it to enter the environment. 42 U.S.C. §7671g(c)(1).

10. The above regulations contain leak repair requirements for industrial process

equipment containing greater than fifty (50) pounds of refrigerant. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

11. The EPA may commence a civil action against any person who has violated any requirement or prohibition pertaining to the use and disposal of Class I and Class II ozone-depleting substances. 42 U.S.C. §7413(b). Civil penalties not to exceed \$25,000 per day for each violation may be imposed. For violations which occur after January 30, 1997, the penalty is increased to \$27,500 per day for each violation. *See* 62 Fed. Reg. 13514.14.

12. Pursuant to 40 C.F.R. §82.156, a facility with industrial process equipment containing more than fifty (50) pounds of refrigerant must keep the leak rate of its equipment below a 35% annualized leak rate. When the leak rate exceeds 35%, the facility must repair the leak within thirty (30) days. *See* 40 C.F.R. §82.156(i)(2).

13. If a leak repair is attempted, the facility must perform an initial verification leak check on the equipment. A follow-up verification leak test must be performed within thirty (30) days. *See* 40 C.F.R. §82.156(i)(3).

14. If a leak repair has not been successfully completed within thirty (30) days, the facility must replace or retrofit the equipment. *See* 40 C.F.R. §156(i)(3)(ii). Once replacement or retrofit is selected, the facility must develop a one-year plan and submit it to the EPA prior to taking action. *See* 40 C.F.R. §82.156(i)(6).

15. If a leak repair is attempted and the follow-up verification test reveals that the leak rate is over 35%, the facility must notify EPA within thirty (30) days. *See* 40 C.F.R. §82.156(i)(3)(iii) and §82.166(n).

16. The owner/operator of industrial process equipment must maintain on-site and report

to the EPA, *inter alia*, the leak rate of any equipment, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed. 40 C.F.R. §82.166(n).

17. The date, type and result of all initial and follow-up verification tests must be reported to the EPA within thirty (30) days of performance. 40 C.F.R. §82.166(n)(3).

ALLEGATIONS

18. Mississippi Bakery has three industrial process refrigeration equipment units used by the bakery. The full charge of refrigerant required for these units is more than fifty (50) pounds. These units include an ice water unit with 103 pounds of refrigerant; a dough refrigeration unit with 308 pounds of refrigerant; and a Triumph refrigeration unit with 135 pounds of refrigerant. Aldi Foods. All these units utilize R-22 refrigerant, a Class II substance.

19. At all times relative to this Complaint, Mississippi Bakery and Aldi Inc. have been the "owner or operator" of the industrial process units which are "appliances" within the meaning of 42 U.S.C. §7671(l) and 40 C.F.R. §82.152. Mississippi Bakery and Aldi, Inc. are a "person" as defined in 42 U.S.C. §7602(e) and 40 C.F.R. §82.152 and within the meaning of 42 U.S.C. §7413.

Ice Water Unit - 103 lbs. R-22

20. On or about December 5, 1999, Mississippi Bakery performed service on the Ice Water Unit and added forty-eight (48) pounds of refrigerant. The annualized leak rate at this time was 79%.

21. Mississippi Bakery attempted a repair effort on December 5, 1999.

22. Mississippi Bakery did not conduct a follow-up verification test within thirty (30)

days of the repair attempt in violation of 40 C.F.R. §82.156(i)(3).

23. The annualized leak rate was not brought down to less than 35% within thirty (30) days of the repair attempt in violation of 40 C.F.R. §82.156(i)(2).

24. Mississippi Bakery failed to notify EPA that it could not repair leaks within thirty (30) days of the failed repair attempt in violation of 40 C.F.R. §82.156(i)(3)(iii).

25. Mississippi Bakery failed to retrofit or replace the Ice Water Unit within one year after failing to verify that repairs had been successfully completed in violation of 40 C.F.R. §82.156(i)(3)(ii).

26. Mississippi Bakery failed to develop a one year retrofit or retirement plan for the ice water unit in violation of 40 C.F.R. §82.156(i)(6).

27. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the ice water unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

Dough Refrigeration Unit - 308 lbs. R-22

April 17, 2002

28. On or about April 17, 2002, Mississippi Bakery conducted service on the dough refrigeration unit and added twenty-six (26) pounds of refrigerant. The annualized leak rate at this time was 3,126%.

29. Mississippi Bakery did not conduct repairs on the unit and did not conduct an initial verification test or any follow-up verification tests in violation of 40 C.F.R. §82.156(i)(3).

30. Mississippi Bakery failed to bring the leak rate below 35% within thirty (30) days in

violation of 40 C.F.R. §82.156(i)(2).

31. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

32. Mississippi Bakery failed to retrofit or replace the dough refrigeration unit within one year after failing to verify that repairs had been successfully completed in violation of 40 C.F.R. §82.156(i)(3)(ii).

33. Mississippi Bakery failed to develop a one year retrofit or retirement plan for the dough refrigeration unit in violation of 40 C.F.R. §82.156(i)(6).

34. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the dough refrigeration unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

June 15, 2002

35. On or about June 15, 2002, Mississippi Bakery conducted service on the dough refrigeration unit and added thirty (30) pounds of refrigerant. The annualized leak rate at this time was 1,804%.

36. Mississippi Bakery did not conduct repairs on the unit and did not conduct an initial verification test or any follow-up verification tests in violation of 40 C.F.R. §82.156(i)(3).

37. Mississippi Bakery failed to bring the leak rate below 35% within thirty (30) days in violation of 40 C.F.R. §82.156(i)(2).

38. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

39. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the dough refrigeration unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

Triumph Refrigeration Unit - 135 lbs., R-22

March 10, 1999

40. On or about March 10, 1999, Mississippi Bakery conducted service on the Triumph Refrigeration Unit and added twenty (20) pounds of refrigerant. The annualized leak rate at this time was 387%.

41. Mississippi Bakery attempted a repair effort on March 10, 1999.

42. Mississippi Bakery failed to effectively conduct repairs or bring the leak rate below 35% within thirty (30) days in violation of 40 C.F.R. §82.156(i)(2).

43. Mississippi Bakery failed to perform a follow-up verification test within thirty (30) days of the repair efforts in violation of 40 C.F.R. §82.156(i)(3).

44. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

45. Mississippi Bakery failed to retrofit or replace the Triumph Refrigeration Unit within one year after failing to verify that repairs had been successfully completed in violation of 40 C.F.R. §82.156(i)(3)(ii).

46. Mississippi Bakery failed to develop a one year retrofit or retirement plan for the Triumph Refrigeration Unit in violation of 40 C.F.R. §82.156(i)(6).

47. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate

of the Triumph Refrigeration Unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

July 10, 1999

48. On or about July 10, 1999, Mississippi Bakery conducted service on the Triumph Refrigeration Unit and added eleven (11) pounds of refrigerant. The annualized leak rate at this time was 124%.

49. Mississippi Bakery failed to effectively conduct repairs or bring the leak rate below 35% within thirty (30) days in violation of 40 C.F.R. §82.156(i)(2).

50. Mississippi Bakery failed to perform an initial or a follow-up verification test within thirty (30) days in violation of 40 C.F.R. §82.156(i)(3).

51. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

52. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the Triumph Refrigeration Unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

September 6, 1999

53. On or about September 6, 1999, Mississippi Bakery conducted service on the Triumph Refrigeration Unit and added seven (7) pounds of refrigerant. The annualized leak rate at this time was 44%.

54. Mississippi Bakery failed to effectively conduct repairs or bring the leak rate below

35% within thirty (30) days in violation of 40 C.F.R. §82.156(i)(2).

55. Mississippi Bakery failed to perform an initial or a follow-up verification test within thirty (30) days in violation of 40 C.F.R. §82.156(i)(3).

56. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

57. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the Triumph Refrigeration Unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

February 9, 2000

58. On or about February 9, 2000, Mississippi Bakery conducted service on the Triumph Refrigeration Unit and added eight (8) pounds of refrigerant. The annualized leak rate at this time was 219%.

59. Mississippi Bakery failed to effectively conduct repairs or bring the leak rate below 35% within thirty (30) days in violation of 40 C.F.R. §82.156(i)(2).

60. Mississippi Bakery failed to perform an initial or a follow-up verification test within thirty (30) days in violation of 40 C.F.R. §82.156(i)(3).

61. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

62. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the Triumph Refrigeration Unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of

repair work that has been completed in violation of 40 C.F.R. §82.166(n).

November 7, 2000

63. On or about November 7, 2000, Mississippi Bakery conducted service on the Triumph Refrigeration Unit and added four (4) pounds of refrigerant. The annualized leak rate at this time was 35%.

64. Mississippi Bakery failed to effectively conduct repairs or bring the leak rate below 35% within thirty (30) days in violation of 40 C.F.R. §82.156(i)(2).

65. Mississippi Bakery failed to perform a follow-up verification test within thirty (30) days of the repair efforts in violation of 40 C.F.R. §82.156(i)(3).

66. Mississippi Bakery failed to notify EPA that it failed to conduct any follow-up verification test in violation of 40 C.F.R. §82.156(i)(3)(iii).

67. Mississippi Bakery failed to retrofit or replace the Triumph Refrigeration Unit within one year after failing to verify that repairs had been successfully completed in violation of 40 C.F.R. §82.156(i)(3)(ii).

68. Mississippi Bakery failed to develop a one year retrofit or retirement plan for the Triumph Refrigeration Unit in violation of 40 C.F.R. §82.156(i)(6).

69. Mississippi Bakery failed to maintain on-site and /or report to the EPA the leak rate of the Triumph Refrigeration Unit, the method used to determine the leak rate, the date a leak rate greater than 35% was discovered, the location and extent of leaks, and the date and type of repair work that has been completed in violation of 40 C.F.R. §82.166(n).

PRAYER FOR RELIEF

WHEREFORE, the United States prays for the following relief:

1. The Defendants be enjoined from operating in violation of the Clean Air Act, 42 U.S.C. §§7401-7671q and regulations promulgated at 40 C.F.R. part 82, Subpart F.
2. Civil penalties of not more than \$27,500 per violation per day be imposed for the above cited violations of 40 C.F.R. §82.156(i)(2); 40 C.F.R. §82.156(i)(3); 40 C.F.R. §82.156(i)(3)(iii); 40 C.F.R. §82.156(i)(3)(ii); 40 C.F.R. §82.156(i)(6); and 40 C.F.R. §82.166(n).
3. Grant the United States such other relief as this Court deems appropriate.

Respectfully Submitted,

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